

THE EFFECTIVE DATE OF THIS ORDINANCE IS September 28, 2006

ORDINANCE NO. 06-30-426

OPINION, FINDINGS AND ORDINANCE
OF
THE BOARD OF COUNTY COMMISSIONERS
OF
FREDERICK COUNTY, MARYLAND

RE: APPLICATION OF 75-80 PROPERTIES LLC and
H.F. PAYNE CONSTRUCTION CO., INC.

REZONING CASE NO. R-05-06

OPINIONS/FINDINGS

75-80 Properties, LLC and H. F. Payne Construction Co., Inc. filed this application to rezone 402.04 acres of land, more or less, from the Agriculture (A), R-1 (Residential - Low Density) and R-3 (Residential - Low Density) Districts to the PUD (Planned Unit Development) Overlay Zoning District, all as more fully described in the record. The property is located on the north side of MD 80 spanning both sides of MD 75, east of Ed McClain Road, west of Lynne Burke Road, and south of the Village of Monrovia in the Urbana Planning Region.

The staff of the Frederick County Planning Commission recommended approval of the proposed PUD zoning and concurred with the 17 conditions recommended by the Planning Commission. The maximum land use density recommended by the Planning Commission staff is based on the project concept proposal and consists of 1,608 dwelling units on the 402.04 acres, a gross PUD

density of 4.0 dwelling units per acre. Comprising seven adjoining parcels, the project is proposed as a mixed-use, age-restricted community for adults aged 55 and older to include 1,608 dwelling units, 30,000 square feet of commercial services uses, associated community amenities, and civic uses. An associated town center project includes additional properties, totaling approximately 97 acres, that are not part of this PUD application. The 50+ acre, Agriculture zoned "Burrall Property" is located outside of the western end of the project area north of MD 80 and south of the former 75/80 Dragway site. The applicants are offering much of this area for potential public uses that may include a joint fire and rescue/sheriff's substation, a future school site, or parkland. The remainder of the adjacent property, approximately 45 acres, is zoned GC (General Commercial) and is envisioned as a walkable town center area with commercial, service and civic uses developed to complement the proposed PUD and the adjacent Green Valley Active Adult PUD community located on the west side of Ed McClain Road.

Based on all the evidence submitted in this case, the Board makes the following specific findings of fact (in addition to the findings above) on each of the matters mentioned in Maryland Code Annotated Article 66B, § 4.05(a):

1. POPULATION CHANGE.

The current population in the vicinity of the project is 1,148. With a potential for 1,608 dwelling units, the development could have a population of 2,686, based on an average household size of 1.67 people per age-restricted household in Frederick County.

2. AVAILABILITY OF PUBLIC FACILITIES.

A. SCHOOLS

Since the development is proposed to be restricted to people 55 years of age or older, it does not appear to have a direct impact on school enrollments. The County's Adequate Public Facilities Ordinance (APFO) currently exempts projects for "housing for older persons" from the schools test.

B. FIRE AND RESCUE SERVICES

The site will be served by the Green Valley Substation of the New Market District Fire-Rescue facility located on the southeast corner of MD 80 and MD 75 (adjacent to Green Valley Elementary School). This station is situated less than ½ mile from either of the proposed neighborhood centers and less than 1,000 feet from the core mixed-use town center area. Emergency services are also available from the main New Market Station (2.75 miles from this site) as well as the Urbana Volunteer Fire and Rescue Company #23 located on MD 355 in Urbana (approximately 5 miles from the site).

C. POLICE SERVICES

Police protection will be provided by the Frederick County Sheriff's Department and the Maryland State Police. Currently the nearest Sheriff's Office facility is located at Airport Drive in Frederick City, approximately 9.5 miles from the site. A 3,000 square foot Sheriff's Office Substation is currently planned for Fiscal Year (FY) 2008 and will be part of the Green Valley Fire and Rescue Station project.

D. LIBRARIES

The Monrovia community is currently served by Frederick County's central facility - the C. Burr Artz Library - on East Patrick Street in Frederick City, approximately 10 miles from the site. A new regional library facility is currently under construction in the Villages of Urbana PUD mixed use town center area north of relocated MD 355. This new facility, which combines a senior facility on the first floor and a library on the second and third levels, will serve as a regional center serving the southern part of Frederick County. The new facility is located approximately five (5) miles from the site and is scheduled to open in 2006.

E. PARKS AND RECREATION FACILITIES

The Urbana Region Plan identifies two (2) County-owned community parks serving the regional needs of the residents: Kemptown Community Park, located approximately 2.75 miles southeast of the proposed PUD; and Urbana Community Park, located approximately 5 miles west of the PUD site. Including federal, state, county and private parklands, the Urbana Region contains nearly 6,600 acres of park area and open space. This acreage constitutes 16% of the Region's total land area.

A 100 acre District Park is being planned for the Urbana area located just north of the historic village area on MD 355. Construction of the initial phase of this park facility is scheduled for FY 2007.

The Bush Creek Special Use Park has been dedicated for public use as a condition of the Green Valley Active Adult Community PUD. Access to the public park will be determined by the County at a later date; however, trail and pedestrian access will be integrated into the design of the Green Valley project. Pedestrian access between the two PUD projects should also allow for pedestrian movement to the park from the Monrovia Town Center project regardless of any future park access formulated through development of the special use park facility.

The Urbana Region Plan identifies a general site location for a future Community Park west of the PUD along MD 80. The applicant has offered a 45 acre tract on the southwest corner of the site for public use. This parcel, outside of the PUD boundary, but adjacent to the PUD site, could be developed in part as a community park.

The PUD proposal identifies 16 parks or common areas within the Monrovia Town Center development.

F. WATER AND SEWER

Current sewer service classification of the land in the Monrovia Town Center PUD is generally divided along MD 75. The areas located east of MD 75 are generally designated S-5 DEV, indicating service within 7 to 20 years. Areas located west of MD 75 are generally designated S-4 DEV, indicating sewer service within 4 to 6 years. Water service classification is divided similarly, with W-5 DEV designation (service in 7 to 20 years) on the east side of MD

75. On the west side of MD 75, the southern portion is designated W-3 DEV (service within 3 years), with the northern portion designated W-4 DEV (service in 4 to 6 years).

Public water and sewer service is not provided currently to the area of the PUD. The nearest public water facility is the east-west water main (East County Loop) that runs parallel to I-70 approximately 2.5 miles north of the PUD. A large capacity water storage tank is located northeast of the site, north of the railroad. The nearest public sewer facility is the Bush Creek Interceptor -- the existing terminus (planned junction point for the extension) of which is located where it crosses Ball Road, north of the Villages of Urbana. An existing sewage treatment plant is located ½ mile north of the PUD near the Village of Monrovia.

The current Capital Improvements Program (CIP) identifies the extension of the Bush Creek Interceptor as a funded project to be completed for sewer service to the Monrovia District Community within the next six (6) fiscal years. Developers of the Green Valley Active Adult Community will be responsible for the construction of this extension to Monrovia with funding and logistical participation from the Monrovia Town Center PUD applicant. The applicant's phasing plan calls for construction of the interceptor during the third year of the project. The applicant's easement agreements have been executed for the right-of-way necessary for the connection to the Bush Creek Interceptor once it has been extended to the Monrovia region.

The applicant proposes to construct a main line extension to meet the East County water main north of the site in the second and third years of the project (2008 - 2009). Additionally, a two million gallon water storage tank is proposed to serve the development's needs. This facility would be constructed on the highest point in the development during the project's fourth year (2010).

3. PRESENT AND FUTURE TRANSPORTATION PATTERNS.

A. EXISTING SITE ACCESS CHARACTERISTICS

The site of the proposed Monrovia Town Center PUD (and the larger Monrovia District Community development that includes the GC zoned properties) is situated at the intersection of two State arterial roadways -- MD 75 (major arterial) and MD 80 (minor arterial).

MD 80 serves as an east-west connector between northern Montgomery County and the I-270/MD 355 corridor. MD 75 serves as a primary north-south route facilitating travel in the eastern portion of the County.

B. EXISTING TRAFFIC VOLUMES ON ADJOINING ROADS

Traffic counts conducted by the Maryland State Highway Administration in 2004 indicate an average annual daily traffic (AADT) count of 6,575 vehicles per day on MD 75 (0.2 miles north of MD 80). The AADT traffic count on MD 75 (0.2 miles south of MD 80) was 8,575. Traffic volume on MD 80 (0.2 miles west of MD 75 north) was approximately 7,775 vehicles per day in 2004. Traffic volume on MD 80 (0.1 miles west of MD 75 South) was approximately 15,975 vehicles per day in 2004. Traffic volume on MD 80 (0.1 miles east of MD 75 south) was approximately 9,575 vehicles per day in 2004. Traffic volume on I-70 (0.3 miles west of Bill Moxley Road) was approximately 67,450 vehicles per day in 2004.

C. POTENTIAL TRAFFIC GENERATION FOR PROPOSED USE

As an age restricted development, the expected vehicle trip generation would be less than for a conventional residential development. A traffic impact study is to be prepared as part of the Phase II PUD review.

D. COMPREHENSIVE PLAN DESIGNATIONS FOR ADJOINING ROADS

The Urbana Region Plan designates MD 75 as a major arterial and MD 80 as a minor arterial. The applicant proposes four transportation improvements as part of the PUD project:

1. Provide the right-of-way north of MD 80 for the realignment of the MD 75-MD 80 intersection (includes funding participation on this improvement).
2. Widen MD 75 to a 4-lane section through the GC zoned property that is a part of the overall project for Monrovia Town Center.

3. Provide right-of-way for, and construct, the collector road linking Ed McClain Road and MD 75 (in partnership with the Green Valley Active Adult Community).
4. Assessment of \$10,000 per non-MPDU dwelling unit (\$10,000 x 1,408 d.u. = \$14,080,000) to form a road improvement fund for the funding of future transportation improvements in the area. This funding would become available over the course of the 7 to 10 year period of the project's buildout.

4. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA

A. EXISTING LAND USES IN THE NEIGHBORHOOD

Approximately 240 acres of the PUD are zoned R1 (Low Density Residential) and R3 (Low Density Residential). The remaining 169 acres are Zoned A (Agriculture). To the east of the site much of the land is zoned R1 and is developed as low-density housing utilizing on-site well and septic systems. To the west of the site the lands contiguous to the western boundary of the PUD are zoned PUD (Planned Unit Development) and are part of the approved Green Valley Active Adult Community. Lands north of the site on either side of MD 75 are zoned R1 and A (Agriculture). Lands contiguous to the southern boundary of the PUD are zoned GC (General Commercial). Most of the remaining surrounding lands to the south and west of the PUD are zoned A (Agriculture).

B. SUBDIVISION ACTIVITY IN THE NEIGHBORHOOD

The two predominant land uses in the vicinity of the proposal are agriculture and low density residential. Much of the land situated to the east and northeast of the proposed site has been developed as low-density (well and septic) housing on 1-acre lots. Immediately to the west of the site is a previously approved PUD, the Green Valley Active Adult Community, planned to eventually grow into a community of over 1,100 age-restricted homes.

C. LAND PRESERVATION ACTIVITY IN THE NEIGHBORHOOD

The 254-acre Wood Agricultural Preservation District (a Maryland Agricultural Land Preservation Fund district) is located approximately 1.5 miles to the northwest of the site.

D. CULTURAL RESOURCES IN THE NEIGHBORHOOD

The 1993 New Market and Urbana Regions Historic Sites Survey field notes identify four (4) farmsteads or building groups that may exist on properties that are part of this PUD proposal:

- 1) 4402A Green Valley Road
- 2) 4303A Green Valley Road
- 3) 4303B Green Valley Road
- 4) 4529 Ed McLain Road

It appears that State permits for access onto MD 75 and MD 80 will be necessary as part of this proposal, triggering a "Section 106" historical review by the Maryland Historical Trust.

5. RECOMMENDATION OF THE FREDERICK COUNTY PLANNING COMMISSION

The Frederick County Planning Commission recommended approval of the PUD Zoning Map Amendment Request R-05-06 with seventeen conditions.

6. RELATIONSHIP OF PROPOSED AMENDMENT TO THE COMPREHENSIVE PLAN

The proposal generally follows the patterns and recommendations set forth in the Urbana Region Plan. The establishment of this PUD, in conjunction with the Green Valley Active Adult Community to the west, nearly implements the entirety of the growth ultimately slated for this area. The buildout of this PUD would result in a population constituting over 80% of the planned 20-year growth project for the District Community.

Based on all the evidence submitted in this matter, the Board of County Commissioners determines that this project concept is both feasible and desirable. The Board finds that the proposal complies with all of the purposes of the PUD classification and will further those purposes. The Board finds that this proposal is compatible with adjoining land uses and will have no significant adverse impacts. The Board finds that the required conditions are related both in nature and extent to the impact of the proposed development. The Board establishes the maximum gross land use density as 4.0 dwelling units per acre, based on the ratio of the 1,608 proposed dwelling units to the 402.04 acre site.

The proposed PUD Floating Zone classification will be granted subject to the conditions stated below.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, Rezoning Case No. R-05-06 is hereby **GRANTED** for the reclassification of 402.04 acres of land, more or less (as delineated in the record), from the Agricultural, R-1 and R-3 zones to the Planned Unit Development (PUD) Floating Zone classification, subject to the following conditions¹:

1. A maximum of 1,608 age-restricted dwelling units may be constructed.
2. The applicant shall record final plats for no more than 300

¹ The term "developer" or "applicant" as used in this Ordinance includes all present and future owners and developers of the property. These conditions run with the land.

residential dwelling units in any calendar year. A previous year's unused allocation may be carried over into the following year.

3. As proffered by the applicant, covenants shall restrict 100% of the dwelling units to be age-restricted per the Federal Fair Housing Act and Housing for Older Persons Act of 1995, with further limitation on the minimum age of permanent residents being 19 years of age. These covenants shall be recorded prior to the recording of the first subdivision plat. The covenants shall be recorded and made part of the title for each dwelling unit, and every property owner within the Monrovia Town Center PUD community (and community association) shall be beneficiaries of the covenants with ability to enforce them through administrative or judicial proceedings. These covenants are to be reviewed by the County Attorney's Office to ensure that the PUD zoning classification is invalid if these covenants are not recorded and do not restrict age as proffered in a binding and enforceable manner. The required biannual federal surveys (24 cfr 100.307) shall be made available to the County for its review and records.
4. No lots shall be recorded within the PUD until the Bush Creek Interceptor (Middle Phase) sewer line is available for service to the project, and the Ballenger Creek/McKinney Wastewater Treatment Plant has capacity available on a "first come/first served" basis.
5. No lots shall be recorded within the PUD until provision for public water service is made and is available for service to the project via a connection to the East County Loop water main.
6. The applicant shall dedicate, prior to the recording of the first lot, a 51.9 acre public use site on the Burall property and 75/80 Dragway parcels as shown on the Schematic Plan. Within this 51.9 acre public use site, an area, not to exceed five (5) acres in size, shall be designated for the explicit use as an emergency services campus to house a future fire and rescue substation and a Sheriff's substation. This emergency services campus site shall be approved by the County prior to dedication.
7. The applicant shall seek to minimize the gap created by the transmission corridor on the eastern portion of the site by investigating creative design solutions that will bridge this land barrier.

8. The applicant shall improve to local street standards, the east side of Ed McClain Road, from the main entrance of the Green Valley Active Adult Community PUD to the northernmost point of the Monrovia Town Center PUD frontage along this existing roadway. This condition shall be limited to those parcels with frontage on Ed McClain Road and that are under the control of the applicant.
9. The applicant shall improve/relocate Ed McClain Road, from its point of intersection with the planned Collector road (Ed McClain Rd to MD 75) to its intersection with MD 80, prior to the issuance of a building permit for the 1,400th dwelling unit.
10. Access from the project site shall be designed and constructed in such a way as to preclude right-turn (northbound) movements onto Ed McClain Road to discourage traffic from traveling northbound to access Maryland Route 75.
11. Prior to the issuance of any building permits associated with the development of the Monrovia Town Center PUD, the applicant shall dedicate to the State Highway Administration the necessary right-of-way for the relocation and reconstruction of MD 75 including the entirety of the realignment immediately north and south of MD 80. The final alignment and design shall be subject to approval by the State Highway Administration.
12. The applicant shall provide an appropriate guarantee/bond (as approved by the County Attorney) for the construction of relocated MD 75 – including the entirety of the realignment immediately north and south of MD 80 - prior to the issuance of any building permits associated with the development of the Monrovia Town Center PUD.
13. The relocation and reconstruction of MD 75 shall be complete and open to service prior to the issuance of a building permit for the 301st residential dwelling unit.
14. Prior to the issuance of the building permit for the 200th dwelling unit the applicant shall dedicate the necessary right-of-way for the Collector road connecting Ed McClain Road and MD 75. The roadway shall be constructed, open to service, and accepted by the County prior to the issuance of the building permit for the 901st dwelling unit.

15. The applicant shall provide for safe and adequate vehicular and pedestrian crossings to allow residents on both sides of MD 75 convenient and free access across this highway corridor while striving to minimize disruption to traffic flow on MD 75.
16. All construction traffic for this project shall be prohibited from using Ed McClain Road north of the proposed Ed McClain Road/MD 75 collector road.
17. The applicant shall contribute \$10,000 per dwelling unit (exclusive of Moderately Price Dwelling Units, or MPDUs) to be paid to the County at the issuance of each residential building permit. The County shall place these funds in a segregated account to be used for the purpose of planning and constructing necessary transportation improvements in the general vicinity of the Monrovia Town Center PUD. Such improvements may include development of the relocated MD 75 from its interchange with I-70 to its reintegration with the existing alignment south of the historic village of Monrovia.
18. As proffered by the applicant, at the time of Phase III approval, the applicant shall contribute \$500,000 to a County fund intended to be used to leverage state funding for project planning for design of improvements and realignment of MD 75 from I-70 to Bush Creek or costs related thereto. This contribution constitutes a pre-payment of a portion of the monies referenced in Condition #17.
19. The applicant for the Monrovia Town Center PUD shall be limited to receiving building permits for no more than 250 dwelling units in any given calendar year.

The conditions included as part of the granting of this PUD floating zone request are deemed necessary for the health, safety and welfare of the community; are imposed as an integral part of this approval; and are not separable from the decision to grant the requested floating zone classification. If, for any reason, a court of competent jurisdiction finds that any material portion of any of these

conditions is substantially invalid or unenforceable, the zoning shall revert to the previous Agricultural (A), R-1 and R-3 (Low Density Residential) zoning classifications.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD, that the Zoning Administrator is hereby authorized and directed to make the appropriate change on the Zoning Map showing this reclassification, with conditions, as indicated above.

The undersigned hereby certify that this Ordinance was approved and adopted on the 28th day of September, 2006.

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

By: Michael L. Cady
Michael L. Cady, Vice President

John R. Lovell, Jr.
John R. Lovell, Jr.

ATTEST:

Douglas D. Browning
County Manager

Bruce L. Reeder
Bruce L. Reeder

MSC 9/28/06

Commissioners John L. Thompson, Jr. voted against the proposed reclassification. Commissioner Jan H. Gardner abstained.